

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6075 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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MANOJ NARIMAL SINDHI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

MR LR POOJARI, ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/02/99

ORAL JUDGEMENT

The petitioner through this writ petition under Article 226 of the Constitution of India, has challenged the detention order dated 30.6.1998 passed by the Police Commissioner, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA') and has prayed for quashing of the said order and his immediate release from illegal detention.

From the grounds of detention it appears that four cases under Bombay Prohibition Act, were registered

against the petitioner. In addition to this, two confidential witnesses stated about the activities of the petitioner which were connected with bootlegging activities and also activities being prejudicial for maintenance of public order. On the aforesaid material, the Detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

In the course of argument the order of detention has been challenged on two grounds. The second ground was added subsequently by getting the writ petition amended.

The first ground has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

So far as the bootlegging activities of the petitioner are concerned, on the strength of four registered cases under Bombay Prohibition Act as well as from the statements of two confidential witnesses, the detaining authority was justified in arriving at subjective satisfaction that the petitioner is a bootlegger.

A bootlegger cannot be detained under PASA merely because of his involvement in bootlegging activity. Further, requirement is that his activities should be prejudicial for maintenance of public order.

Four registered cases under Bombay Prohibition Act, do not indicate that at the time of search, seizure and recovery the petitioner created situation which was prejudicial for maintenance of public order. As such, these four cases cannot be pressed in service for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

Coming to the statements of two confidential witnesses it can be said that from their statements reproduced in the grounds of detention it can safely be said that it was incident between petitioner and the two witnesses and the members of public were hardly affected or injured by the petitioner. The manner in which the first witness was beaten by the petitioner is not disclosed. So is the case with the second witness. Addition in the statement of the second witness is that knife was touched but it is not disclosed on which portion of body knife was touched and whether any injury

was caused to the witness or not. It also does not indicate that any member of the public was injured. Consequently, the public at large was not affected with these two activities of the petitioner and these two activities cannot be said to have endangered the maintenance of public order. If this is so, then the detention order becomes invalid.

The second ground which was introduced after getting the writ petition amended that the mother of the petitioner sent representation on 30.7.1998 to the Secretary, Advisory Board but it was not considered by the Advisory Board nor it was forwarded by the Advisory Board to the State Government for consideration. From the counter affidavit of Shri J.R.Rajput, Under Secretary, Government of Gujarat, it appears from para 5 that the said representation was not received by the Advisory Board. Information from the post office was called by the Advocate of the petitioner which has been filed today. It shows that the said representation dated 30.7.1998 was delivered to the Secretary, Advisory Board, Home Department, Gandhinagar on 31.7.1998. No rejoinder has been filed to this correspondence and still the stand of the learned Assistant Government Pleader that this representation was not received by the Secretary, Advisory Board. In the absence of the rejoinder affidavit the certificate from the post office cannot be disbelieved. It is, therefore, established that the representation dated 30.7.1998 was received by the Secretary, Advisory Board on 31.7.1998 but was not placed on record. The learned Assistant Government Pleader informs that the report of the Advisory Board was given on 10.8.1998. If this is so then it follows that the representation sent by the mother of the detenu was not at all considered by the Advisory Board and as such the detention order has been rendered illegal and invalid.

In the result, the writ petition succeeds and is hereby allowed. The impugned order of detention dated 30.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt